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Client Advisory

The More Things Change: . . . Congress Reintroduces the Workforce Mobility Act

In what is fast becoming a [pattern](#), members of the United States Senate and the House of Representatives reintroduced bills that would effectively eliminate non-compete agreements (“NCAs”) throughout the country. The bills—S.843 in the Senate and H.R.1367 in the House—appear to largely echo the Workforce Mobility Act of 2019, which we wrote about [here](#). The 2019 bill ultimately did not become law. Now, a bipartisan group of Senators, led by Democrats Chris Murphy and Tim Caine, and Republicans Todd Young and Kevin Cramer, are making another attempt in the beginning months of this new Congress.

While the text of the bills has not yet been released, Senator Murphy’s website offers the general [outline](#). The bill would:

- Narrow the use of non-compete agreements to include only necessary instances of a dissolution of a partnership or the sale of a business;
- Place the enforcement responsibility on the Federal Trade Commission and the Department of Labor, as well as a private right of action;
- Require employers to make their employees aware of the limitation on non-competes, as studies have found that non-competes are often used even when they are illegal or unenforceable. The Department of Labor would also be given the authority to make the public aware of the limitation; and
- Require the Federal Trade Commission and the Department of Labor to submit a report to Congress on any enforcement actions taken.

Currently, each state is free to enact its own laws and courts can develop their own case law regarding NCAs. This new bill would take that power out of the states’ hands and impose one uniform policy

throughout the country.

More importantly, the bill would drastically limit the situations in which an employer could require an employee to sign an NCA to the dissolution of a partnership or sale of a business. Thus, employers would no longer be able to limit their employees’ ability to go to work for a competitor, even if doing so would harm the employer’s legitimate business interests. Competitors would be free to poach other businesses’ most valuable employees, and there would be no legal remedy to stop it. In other words, this bill would cause a seismic shift in the landscape for NCAs and change the law as we know it throughout the country.

Employers would be wise to review their current NCAs and, if appropriate, consider amendments in the event this bill is enacted. It is unclear whether the bill will contain a grandfather provision for existing NCAs, so employers should get their houses in order now. We will review the text of the bill once it is made publicly available and keep an eye on its progress as it makes its way through Congress.

In the meantime, if you have questions about NCAs or the many legal issues that they create, feel free to contact [Tom Muccifori](#), Chair of Archer’s [Trade Secret Protection and Non-Compete Group](#) at 856-354-3056 or tmuccifori@archerlaw.com, or any member of the Group in: Haddonfield, NJ at 856-795-2121, Princeton, NJ at 609-580-3700, Hackensack, NJ at 201-342-6000, Philadelphia, PA. at 215-963-3300, or Wilmington, DE at 302-777-4350.

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